

Number: **201003007**
Release Date: 1/22/2010
Index Number: 106.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Telephone Number:

Date:
October 13, 2009

Trust =

Plan =

County =

Union A =

Union B =

Dear _____ :

This is in reply to your letter dated May 11, 2009, and subsequent correspondence, in which you request rulings on behalf of Trust with respect to benefits provided under Plan.

Trust was established by Union A and Union B to fund retiree health benefits for eligible retirees as defined in Plan. Trust provides a funding vehicle to pre-fund retiree health coverage during employment. Pursuant to the terms and conditions of Plan, Trust will provide reimbursement payments to eligible retired employees, their spouses and dependents (as defined in section 152(d) of the Internal Revenue Code (the Code)) and

domestic partners toward the cost of post-retirement medical expenses or health insurance premiums. Covered expenses include only those described in section 213(d) of the Code. No Plan beneficiary can receive a payment from Plan except as payment of a covered expense. There are no cash payments.

Trust and Plan are administered by a Board of Trustees consisting of participating employees in Trust.

Union A and Union B negotiated mandatory contributions for their respective bargaining units, as reflected in their memorandums of understanding (MOUs) with County. Under MOUs and Plan, participation in Plan is mandatory and does not allow for elections either into or out of Plan by the employees. The MOUs and Plan also establish a mandatory pre-tax contribution required for each participant. Additional contributions by participants are not generally permitted. Plan also provides for mandatory contributions of a uniform percentage of accrued sick leave and vacation at the time of retirement. There are no elections on the part of individual employees with respect to contributions or accrued leave.

Plan provides benefits to domestic partners. However, contributions made on behalf of domestic partners are taxable. Trust includes in gross income the value of benefits for domestic partners when the benefits are earned, not when the benefits are received. The value of coverage for a domestic partner will be included during a taxable year if the individual is expected to have a domestic partner upon eligibility for benefits under Plan. Such participants will be identified by reasonable actions of Trust and amounts to be included in the employee's gross income will be determined under an actuarial calculation that takes into account reasonable actuarial assumptions.

LAW AND ANALYSIS

Section 61(a)(1) of the Code and section 1.61-21(a)(3) of the Income Tax Regulations provide that, except as otherwise provided in subtitle A of the Code, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

However, section 106(a) of the Code provides that gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1(a) of the regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund (including a fund

referred to in section 105(e)) which provides accident and health benefits directly or through insurance to one or more of his employees. However, if the insurance policy, trust or fund provides other benefits in addition to accident or health, section 106 applies only to the portion of the contributions allocable to accident or health benefits.

Coverage provided under an accident and health plan to former employees and their spouses and dependents is excludable from gross income under section 106. See Rev. Rul. 62-199, 1962-2 C.B. 32; Rev. Rul. 82-196, 1982-2 C.B. 53. However, employer-provided coverage under an accident or health plan for personal injuries or sickness incurred by individuals other than the employee, his or her spouse, or his or her dependents (as defined in section 152), is not excludable from the employee's gross income under section 106.

Based on the information submitted and representations made, we conclude as follows:

(1) Mandatory pre-tax contributions made to Trust, without any employee election and which are used exclusively to pay for the accident or health coverage of eligible retired employees, their spouses and dependents as defined in section 152 (determined without regard to sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code) are excludable from the gross income of eligible retirees, their spouses and dependents under section 106.

(2) Mandatory contributions of accrued sick leave and vacation made to Trust without any employee election which are used exclusively to pay for the accident or health coverage of eligible retired employees, their spouses and dependents as defined in section 152 (determined without regard to sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code) are excludable from the gross income of eligible retirees, their spouses and dependents under section 106.

To the extent individuals are covered under Trust who do not qualify as a spouse or as a dependent under Federal law, the Trust will, in accordance with applicable tax law, include in the gross income of those employees the fair market value of the coverage for the nonspouse or nondependent.

No opinion is expressed on the classification of Trust as a trust for Federal tax purposes. Further, no opinion is expressed concerning the Federal tax consequences of Plan or Trust under any other provision of the Code other than those specifically stated herein. In particular, section 3.01(a) of Rev. Proc. 2009-3, 2009-1 I.R.B. 107, provides that the Service will not issue a ruling concerning whether a self-insured medical reimbursement plan satisfies the requirements of section 105(h) for the plan year. Accordingly, no opinion is expressed concerning whether Plan satisfies the nondiscrimination requirements of section 105(h) of the Code or section 1.105-11 of the regulations.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representative.

Sincerely,

Harry Beker, Chief
Health and Welfare Branch
Office of Division Counsel/Associate Chief
Counsel (Tax Exempt and Government Entities)